We saw no reason to interfere with the findings of the trial Judge.

For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: *Kirpal Singh & Co.; B. Mohan Singh & Co.*

TEO SIEW PENG v. GUOK SING ONG & ANOR.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) December 1, 1982]

[Singapore – Civil Appeal No. 3 of 1981)

Land Law – Option – Specific performance of – Application refused – Purchaser did not comply with terms of option.

Evidence – Option – Option must be in writing – Evidence Act (Cap. 5), s. 92.

The appellant sought for specific performance of an option in writing dated June 23, 1979 signed by the appellant and the respondents in respect of the sale and purchase of a house at No. 17, Jalan Jelita, Singapore. The High Court dismissed the claim and the appellant appealed. The appellant contended that the trial judge had erred in law in excluding the evidence of the oral agreement alleged by the appellant to have been made between the appellant and the respondents contemporaneously with the written option which oral agreement contained a material term of the bargain.

Held: (1) it is settled law that an option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with;

(2) in the present case the purchaser was required to deliver the Acceptance Copy of the option together with "10% of the purchase price" to the solicitors of the grantor. This condition had not been complied with and as an option to purchase land is a "contract, grant or disposition of property" which is required by law to be in writing the purchaser is precluded by section 92 of the Evidence Act from proving that the parties had orally agreed that the $2,000 she had paid as consideration for the grant of the option could be deducted from the purchase price or from the 10% deposit she was required to pay when exercising the option.

COURT OF APPEAL.

Cheong Yuen Hee (*Goh Soon Hock* with him) for the appellant.

Chim Hou Yan for the respondents.

Cur. Adv. Vult.

Chua J. (delivering the Judgment of the Court): This appeal arises from a judgment of the High Court dismissing the claim by the Appellant (Plaintiff) against the Respondents (Defendants) under an Option in writing dated June 23, 1979, signed by the Appellant and the Respondents in respect of the sale and purchase of house situated at and known as No. 17, Jalan Jelita, Singapore, and in which the Appellant sought (a) specific performance of the said Option; (b) further, or alternatively, damages for breach of contract and (c) a declaration that the Appellant was entitled to a lien on the said property for her payment of $2,000 and any damages.

At the conclusion of the hearing of the appeal we dismissed the appeal and now give our reasons.

The facts are not in dispute. The said Option reads:–

"In consideration of the sum of Dollars two thousand only ($2,000/–) received from you, we, Guok Sing Ong and Lim An Nie of Singapore hereby make the following offer which shall remain open for acceptance in the manner hereinafter stated until 4 p.m. on July 31, 1979.

We offer to sell to you who accepts this offer in the manner hereinafter provided, the above described property upon the terms set out below. This offer may be accepted by the Purchaser signing at the bottom of this Option marked "ACCEPTANCE COPY" and delivering the same duly signed together with 10% of the purchase price to our solicitors Messrs. Guok & Co. of No. 11, D'Almeida Street, Singapore, who are authorised to acknowledge receipt of the deposit on or before 4 p.m. on July 31, 1979.

TERMS

1. The sale herein is subject to The Singapore (Revised) Condition of Sale but in case of any conflict the special terms herein shall prevail.

2. The title shall be properly deduced and free from encumbrances.

3. The purchase shall be completed at the office of our solicitors within 30 days from the date of acceptance or such time when the substituted duplicate certificate of title is issued.

4. The sale price shall be Dollars four hundred and twenty thousand only ($420,000/–).

5. The 10% deposit of the purchase price is irrefundable and shall be forfeited if the purchase is not completed within time.

6. The property is sold with the existing tenancy.

7. The purchase price includes fittings and furniture. The inventory to be attached to the Sale Agreement.

This Option shall expire on July 31, 1979 at 4 p.m. and shall be null and void if not exercised within the stipulated period.

On July 31, 1979, the Appellant purported to exercise the said Option through her solicitors who wrote as follows:—

"Dear Sirs,

re: No 17 Jalan Jelita Singapore

We thank you for your letter of July 30 1979 and the contents thereof are noted. In exercise of the option given to our client to purchase the above property, we enclose herewith the acceptance note together with our client's cheque for a sum of $40,000.00 being the balance of the 10% deposit, $2,000.00 of which had been paid to your clients earlier.

Please note that clause 7 of the option stipulates

> 'The purchase price includes fittings and furniture. The inventory to be attached to the Sale Agreement.'

As there is no Sale Agreement to which the inventory is to be attached, a copy of the inventory of the fittings and furniture is enclosed herewith.

Please acknowledge receipt."

On July 4 the Respondents' solicitors wrote as follows:—

"Dear Sirs,

re: No. 17 Jalan Jelita, Singapore

We refer to your letter of 31st ultimo together with the enclosures therein purporting to have exercised the Option.

We regret to note that your client had in law failed to exercise the Option by, *inter alia,* varying the Inventory.

In the circumstances your client's cheque is returned herein."

It was in these circumstances that the Appellant commenced this action. Her case was that she had duly exercised the said Option and accordingly a binding contract for sale and purchase had come into existence. It was common ground that in exercising the said Option she only paid the sum of $40,000 which was not the full 10% of the purchase price as set out therein. However, she said in evidence that the said Option was properly exercised as "it was agreed that if I exercised the option the $2,000 could be deducted from the purchase price and I understood this to mean that I could deduct it from the 10% deposit." Counsel for the Respondents objected to this evidence on the ground that it was inadmissible by virtue of section 92 of the Evidence Act (Cap. 5) (section 94 of the Reprint of the Evidence Act).

Section 92 enacts that when the terms of a contract, grant or other disposition of property which are required by law to be reduced to a form of a document have been proved then no evidence of any oral agreement or statement can be admitted in evidence for the purpose of contradicting, varying, adding to or subtracting from its terms unless the person seeking to adduce such oral evidence can specifically bring himself within one or other of its provisos.

Before the learned trial Judge, counsel for the Appellant submitted that such evidence came within proviso (c) of the section which reads:—

"(c) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under such contract, grant or disposition of property, may be proved."

The learned Judge did not think that this proviso helped the Appellant. The learned Judge was of the view that the reduction of the purchase price or a reduction in the amount of the 10% payment was not a condition precedent as envisaged in proviso (c).

The learned Judge was of the view that the proviso that was relevant to the present case was proviso (d) of the section which reads:

"(d) the existence of any distinct subsequent oral agreement, to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents,"

The learned Judge said:

"As I understand the law this proviso (d) has been interpreted by the courts to mean that if a contract, grant or disposition of property is by law required to be in writing, then such contract, grant or disposition of property may only be varied by a document in writing by the party to be charged. The law requires that the agreement which varies or alters the contract required by law to be in writing must also be in writing."

The learned Judge held that the said Option had not been exercised properly and dismissed the claim with costs.

The only ground of appeal was that the learned trial Judge had erred in law in excluding the evidence of the oral agreement alleged by the Appellant to have been made between the Appellant and the Respondents contemporaneously with

the written option which oral agreement contained a material term of the bargain.

It is settled law that an option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with. In the present case the purchaser was required to deliver the Acceptance Copy of the option together with "10% of the purchase price" to the solicitors of the grantor. This condition had not been complied with and as an option to purchase land is a "contract, grant or disposition of property" which is required by law to be in writing the purchaser is precluded by section 92 of the Evidence Act from proving that the parties had orally agreed that the $2,000 she had paid as consideration for the grant of the option could be deducted from the purchase price or from the 10% deposit she was required to pay when exercising the option.

For these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *A.S.K. Wee & Co., Hilborne & Co.*

MOHAMED YEANIKUTTY v. FAR EAST TRUCK INC. MANUFACTURING (PTE.) LTD.

[O.C.J. (Chua J.) August 24, 1982]
[Singapore – Suit No. 1305 of 1978]

Labour Law – Injury in the course of employment – Damages – Whether the defendant employers were negligent or in breach of the duty to take reasonable care for the safety of the plaintiff/servant – Factories Act 1973

Tort – Negligence – Workman injured – Whether employers were in breach under Factories Act 1973

The plaintiff claimed against the defendants damages for personal injuries suffered by him in the course of employment by the defendants as a mechanic on July 3, 1975. The plaintiff claimed that the defendants were negligent in (1) failing to provide a safe system of work; (2) failing to provide adequate appliances to enable the plaintiff to carry out the work; and (3) failing to provide any or adequate supervision.

Held: there is no doubt that the cause of the accident was the plaintiff's total disregard in complying with the system of work devised by the defendants for the oil seal change operation. The defendants' claim would therefore be dismissed.

CIVIL SUIT.

H.E. Cashin for the plaintiff.
Tan Tee Seng for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff's claim is for damages for personal injuries and consequential loss suffered by him and caused during the course of his employment by the defendants as a mechanic on the July 3, 1975, by the negligence of the defendants, their servants or agents and/or by breach by the defendants of their duty to the plaintiff as employers of the plaintiff to take reasonable care for the safety of the plaintiff as their servant and/ or by breach by the defendants of statutory duty under the Factories Act, 1973.

The particulars of breach of statutory duty are:

"(a) Failing to provide sufficient training or instructions in the process of work undertaken to the plaintiff ... thereby exposing him to the dangers likely to arise in connection therewith contrary to section 28(1)(a) of the said Act.

(b) Failing to provide adequate supervision by a person who has a thorough knowledge and experience of the said lifting equipment contrary to section 28(1)(b) of the said Act."

The plaintiff was employed as a mechanic by the defendants. The defendants are dealing in mechanical forklifts, their maintenance and repairs. On the July 3, 1975, the plaintiff and one Lim Hee Kian, another employee of the defendants, were instructed to repair an electric forklift at the premises of Philips Singapore Pte. Ltd. at Toa Payoh, Singapore. The repair job was to replace an oil seal of the lifting cylinder.

The lifting equipment consists mainly of three cylinders fitting into one another and by a hydraulic system these cylinders could be extended in a telescopic fashion. At one end of this system is a pin at the top of the second or middle cylinder which fits into an aperture at the lower surface of the upper cross bar of the mast unit called "the third layer" and they are secured by means of a nut. The other end of this system is the lower end of the third or innermost cylinder which is second to the lower cross bar of the mast unit called "the second layer". These mast units provide the right frame to give structural support in the lifting operation. The first or outermost cylinder in this hydraulic system may be moved up and down along the second cylinder.

At the material time the oil seal situated at the top of the first cylinder was leaking. According to the plaintiff, to replace the oil seal, the nut at the top of the first cylinder has first to be unscrewed and slipped out of the second cylinder, thus expos-